

APPEAL NO. 040985
FILED JUNE 18, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 5, 2004. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the 10th, 11th, and 12th quarters.

The appellant (carrier) appeals, contending that the claimant did not meet the requisite requirements to be entitled to SIBs for the disputed quarters. The claimant responds, urging affirmance.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The carrier appeals both the direct result criteria of Section 408.142(a)(2) and Rule 130.102(b)(1) and (c) and the good faith criteria of Section 408.142(a)(4) and Rule 130.102(b)(2).

The claimant, a trash collector, sustained compensable knee and back injuries on _____, when he fell off the garbage truck and was dragged. To complicate matters the claimant has suffered at least two strokes, one in November 1999 and apparently another in 2002, since his compensable injury. The carrier asserts that the claimant's unemployment or underemployment was due to the strokes rather than the compensable injury pointing to a March 23, 1999, functional capacity evaluation (FCE) which indicated that the claimant could work at medium heavy level work (other FCEs in January and March 1999 indicated that the claimant could not return to his preinjury job). The Appeals Panel has stated that to prove direct result the claimant only need establish that the impairment from the compensable injury was a producing cause of the unemployment, not that it was the sole cause. We also have stated that a finding of "direct result" is sufficiently supported by evidence that an injured employee sustained an injury with lasting effects and could not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. The hearing officer in his Background Information discussion relied on the report of a designated doctor (whose report was not accorded presumptive weight) to determine that the claimant could not return to his preinjury employment. The hearing officer's conclusion is supported by the evidence.

Regarding the good faith effort criteria, the hearing officer comments on job searches made by the claimant during the 10th and 11th quarter qualifying periods and concluded that the claimant had failed to prove entitlement to SIBs under Rule 130.102(d)(5) and (e). That conclusion and the comment that the claimant has not met

the requirements of Rule 130.102(d)(1) have not been appealed and will not be discussed further.

Rule 130.102(d)(2) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been enrolled in, and satisfactorily participated in, full-time vocational rehabilitation program sponsored by the Texas Rehabilitation Commission (TRC) during the qualifying period. In evidence is an amended TRC Individualized Plan of Employment (IPE) dated September 23, 2002 (the relevant qualifying periods are from December 5, 2002, through September 3, 2003). The IPE states that counseling and guidance services would be provided through April 1, 2003, and requires the claimant to perform certain job search efforts. The evidence also indicates that the claimant was placed in a sheltered work environment with (GW) from May 7 through June 30, 2003. Why that position ended is unclear but the hearing officer could believe it was due to lack of funding by either or both GW and the TRC. Also in evidence are letters dated June 6, 2003, from the TRC and June 23, 2003, from GW, attesting to the claimant's satisfactorily participation in the TRC and GW "Work Adjustment Training Program." The Appeals Panel has frequently noted that we will not second-guess the TRC on what they consider satisfactory participation (Texas Workers' Compensation Commission Appeal No. 020933, decided May 31, 2002; Texas Workers' Compensation Commission Appeal No. 020986, decided June 5, 2002). Further the Appeals Panel has held that the good faith aspect of Rule 130.102(b)(2) is met if the claimant is enrolled and satisfactorily participating in a TRC sponsored program during the qualifying period. Texas Workers' Compensation Commission Appeal No. 020491, decided April 24, 2002. The hearing officer determined that the claimant was entitled to SIBs for the disputed quarters based on compliance and satisfactory participation in a full-time vocational rehabilitation program sponsored by the TRC.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not erroneous as a matter of law or so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **SAFECO INSURANCE COMPANY OF AMERICA** and the name and address of its registered agent for service of process is

**LEON CROCKETT
1600 NORTH COLLINS BOULEVARD
RICHARDSON, TEXAS 75080.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Veronica L. Ruberto
Appeals Judge

Margaret L. Turner
Appeals Judge